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No. ________

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

MARIE JOHNSON,

Petitioner,

vs.

SECRETARY OF HEALTH &
HUMAN SERVICES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTION PRESENTED

1. Whether the Secretary contradicted Congressional intent and judicial precedent when he promulgated Claims Manual Sections 12964(b)(1)(B) and 13144(b) interpreting the Supplemental Security Income Act. These claims manual sections attribute income from one spouse to another for the six months subsequent to the separation of a couple which is an eligible couple under 42 U.S.C. §§1381-1383 even where the income is not actually available to one spouse and there is no legal responsibility for support by the other spouse. This is not an attack on the benefits level or on the six month rule. The only question is whether income is properly attributed and divided within the couples benefits level.

LIST OF PARTIES

The parties to this proceeding in the United States Court of Appeals for the Ninth Circuit were:

1. Petitioner Marie Johnson, as an individual who claims a denial of benefits under the Social Security Act, was Plaintiff-Appellant in the Ninth Circuit Court of Appeals.

2. Respondent Secretary of Health, Education and Welfare, in his official capacity, was Defendant-Appellee in the Ninth Circuit Court of Appeals.

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The petitioner Marie Johnson, as an individual, prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on February 11, 1982.

OPINION BELOW

The opinion of the Court of Appeals appears in the appendix hereto. The order and the judgment of the District Court for the Northern District of California entered on May 8, 1980 also appear in the appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on February 11, 1982. This petition for certiorari is to be filed within ninety (90) days of that date. This court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

APPLICABLE STATUTES, REGULATIONS AND CLAIMS MANUAL SECTIONS

These are included in the Appendix to the Petition.

STATEMENT OF THE CASE

In September of 1978 Petitioner Marie Johnson was 61 years old and severely disabled. She had been married to Herman Johnson since October 13, 1962 (Appendix p. 4). Mr. Johnson was also elderly and disabled. They were, therefore, a couple eligible to receive financial assistance under the Supplemental Security Income (SSI) Program. 42 U.S.C. § 1382c(b) (Appendix p. 5). Mr. and Mrs. Johnson were also needy and, as a result, turned to this program for help. They were given, as a couples grant $126.30 to supplement the $448.10 Mr. Johnson received each month from his Teamster's union pension and Social Security Benefits (appendix pp. 13-15, 56) 42 U.S.C. §§ 1381, 1381(a), 1382.

Because of marital difficulties the couple separated by mutual

agreement (Appendix p. 5). After the separation Mr. Johnson kept all the pension and Social Security for himself; he shared none of it with Mrs. Johnson (Appendix p. 5). Mrs. Johnson immediately reported this to the Secretary and sought additional SSI for her own support (Appendix p. 5). The Secretary notified Mrs. Johnson that there would not be an immediate increase in benefits; rather the couple's SSI grant was to be divided in one-half and $63.15 paid to each party for six months (Appendix p. 6). This was done under Claims Manual Sections 12964(b)(1)(B) and 13144(b).[1] (Appendix pp. 102,103)

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[1] The Claims Manual is an internal agency guide to field office staff for the operation of the SSI program. It has not been published in the Federal Register, nor promulgated through notice and comment rulemaking. It is not a regulation, has no legal force and does not bind the Social Security Administration. Schweiker v. Hansen, 450 U.S. 785, 789 (1981).

As a result, Mrs. Johnson was left with $63.15 as monthly income from September 1978 until April 1979 (Appendix 6). Mr. Johnson's income, on the other hand, included the entire Teamsters pension, Social Security and half of the SSI couple's grant, a total of $511.25. He not only had more income than Mrs. Johnson,[2] but so much income that he would have been terminated from SSI but for the Secretary's false presumption that he shared his income with Mrs. Johnson. 42 U.S.C. §1382(a)(b)[3] (appendix pp.23-29, amended pp.59-66)

Mrs. Johnson appealed her case to the Social Security Administration. The Administrative Law Judge denied her claim.

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[2] There is no applicable State requirement that a spouse provide support if the parties separate by agreement. California Civil Code §5131. Once separated each party's earnings and accumulations are separate property. California Civil Code §5118.

[3] At that time the individual grant was $307.60 per month.

(Appendix p. 4) Mrs. Johnson then appealed to the District Court for the Northern District of California under 42 U.S.C. 405(g) and 42 U.S.C. 1383(c)(3). (appendix p. 45)

The United States District Court, the Honorable William Ingram, found that the actions of the respondent Secretary did not contravene the relevant statutory and regulatory provisions, and granted summary judgment to the Secretary of Health, Education and Welfare. (Appendix p. 11)

On appeal to the Ninth Circuit Court of Appeals under 28 U.S.C. 1291, Mrs. Johnson claimed, as she had in the lower courts, that the Secretary's interpretation in the claims manual was in violation of the Social Security Act's intent and purpose, as well as of the Code of Federal Regulations; that only money which is actually available to the separated spouse should be counted. The Petitioner's position is, and was, simply that a proper interpretation of this statute required the six month rule to be interpreted as follows: The couple would separate; for six months they would still be required to receive the couple's benefit rate.[4] However, to be consistent with the intent of the Social Security Act, the Secretary would take into consideration the earned income and unearned income actually available to either of the parties. (Appendix pp. 113-123) The Secretary already has regulations doing this in other areas. Adaptation to this situation would present no substantial administrative burden.[5] This interpretation would meet the needs of each individual according to the income actually available to each and, as importantly, would not cost the taxpayer a single dollar more. The cost to the Social Security Administration would be exactly the same because the cap on the payment to the couple would be the same.

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[4] This would be consistent with this Court's approval of deeming and of the six month rule. Weinberger v. Salfi, 422 U.S. 749 (1975), Gray Panthers v. Schweiker, 453 U.S. 34 (1981)

[5] E.g., see 42 C.F.R. 435.723(d) and 20 C.F.R. 416.220

The Social Security Administration presently has to make a determination that the couple has separated and then issue separate checks.[6] The only new step would be completion of an income statement in which each party states the earned or unearned income actually available. This would be filed during the application process which is presently required when a couple separates. As a result, the Social Security Administration would be notified of a proper distribution of the assets of the relationship.

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[6] 20 C.F.R. § 416.1035 formerly 20 C.F.R. § 416.1041 See also 20 C.F.R. 416.220, C.F.R. § 435.732, 42 C.F.R. § 435.733, 42 C.F.R. § 435.723(d).

Claims Manual Sections 12964(b)(1)(B) and 13144(B) (Appendix pp. 102, 103), which presume that separated spouses share income equally, detrimentally affect thousands of people every year (mostly women) while not saving the taxpayer one cent nor preventing any sham separations or harm to the government.

When it created the SSI program, Congress surely did not intend such a senseless and harmful interpretation as that adopted by the Secretary. This Court is empowered with the authority to determine that the procedure in the claims manual is not a fair one as contemplated by 42 U.S.C. §§ 1381-1383. It should find the challenged claims manual sections violative of the intent and purposes of the Supplemental Security Income statute -- to support and benefit the aged, blind and disabled according to their needs.

REASONS FOR GRANTING THE WRIT

THIS CASE RAISES AN IMPORTANT ISSUE OF FEDERAL LAW

A. The Secretary's Interpretation Raises An Important Question Because It Detrimentally and Unfairly Affects Tens Of Thousands of Poor People, Mostly Women.

The Supplemental Security Income program was developed to assist indigent people such as Mrs. Johnson who "cannot work because [of] age, blindness or disability," Schweiker V. Wilson, 450 U.S. 221, 223 (1981).

It is one of the social benefits programs developed by Congress which is specifically aimed at meeting society's obligations to those who cannot adequately care for themselves.

The Claims Manual sections which the Secretary seeks to enforce significantly affect the lives of thousands of indigent

aged, blind and disabled people every year. In 1980, there were 168,257 aged couples on SSI (336,514 people), 4,323 blind couples on SSI (8,464 people), and 69,991 disabled couples on SSI (139,982 people). Social Security Bulletin, Annual Statistical Supplement, 1980, Table 159, p.221. The Secretary's rules allow an unequal distribution of benefits which potentially affects the distribution of income between 272,380 couples, i.e., 484,960 people. This unequal attribution of income affects women most harshly.

Men are far more likely than women to have a work history or work opportunity from which to draw either earned or unearned income.[7/] M. Blaxall and B. Regan, Women and

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[7/] In 1978, as an example, of those women who were family heads over the age of 22, 48% of the poor women in this age group did not work at all, while only 14% of poor men did not work. If we look at work experience, we find that 37% of women did not have any work experience during 1978, while only 16% of men had no work. Social Security Bulletin, Annual Statement Supplement, 1980, Table 10, p.64.

the Workplace: The Implications of Occupational Segregation, (Chicago: University Press) 1976. Further, 38% of men 65 or older are likely to have a pension, while only 18% of women in this same group have a pension.[8/] Many of the 18% of women who have pensions only have survivors' benefits based upon a husband's work record. Working Women, Marriage and Retirement, President's Commission on Pension Policy, August 1980, Shelley Lapkoff, Table 6, p.31. See also Social Security and Changing Roles of Men and Women, (H.E.W.) February 1979.

[8/] Even within these statistics there is more discrimination against women. Within these statistics the average man's private pension is $2,060 per year. If he was a public employee he receives $4,830 annually. The comparable statistics for women are $1,340 and $2,750, repectively. Id.

Moreover, two out of every three poor adults are women.[9] A Statistical Portrait Women in the U.S., in Current Population Reports, Special Study, (Washington, D.C.: U.S. Department of Commerce, Bureau of the Census), Series P-23, No. 56, 1976. See also: Pearce, Diana, "The Feminization of Poverty: Women, Work and Welfare," Urban and Social Change Review, Feb. 1978.

Of the 4,142,017 people eligible and accepted for SSI in 1980, 65.5% were women and only 34.4% were men.[10] Social Security

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9/ For a thorough discussion of the broad impact of disproportionate work and wage availability between men and women see: Final Report of the National Advisory Council, The American Promise: Equal Justice and Economic Opportunity, Women in Poverty (U.S. Government Printing Office) reprinted Clearinghouse Review, p. 925, March 1982.

10/ 1,807,776 were over 65, 78,401 were blind and 2,255,840 were disabled. Id. 228,564 were children. Id. Table 166, p.227.

Bulletin, Annual Statistical Supplement, 1980 Tables 164, 169, pp. 227, 228. After a determination of age, blindness or disability the sole determination is whether the person is needy.

Because of the high divorce rate, the effect of the Secretary's position on women is great. Of marriages begun in 1950, 29.5% have ended or will end in divorce. However, of those marriages begun in 1970, 47.8% will end in divorce. James A. Weed, National Estimates of Marriage, Divorce and Survivorship (Vital and Health Statistics: Series 3, Analytical Studies; No. 19) (Department of Health and Human Services Publication; No. (PHS) 81-1403).

Thus, as was noted earlier, 272,480 couples were on SSI in 1980. All of these people are already needy in varying degrees. Approximately 1/3 to 1/2 of these couples will divorce. Because, as noted previously, women are more likely than men to be poor and abandoned, women are unlikely to have separate income, the number of women unfairly impoverished by the Secretary's interpretation of the Social Security Act runs into the tens of thousands.

B. The Secretary's Interpretation Raises An Important Issue Because It Contradicts the Intent of Couples In Enacting the SSI Program To Provide Income Maintenance For the Indigent Aged, Blind and Disabled.

1. Background

The SSI program, 42 U.S.C. §§ 1381-1383, was created to provide a subsistence level allowance to needy aged, blind and disabled persons. Schweiker v. Wilson, supra, S.Rep. No.92-1230, 92nd Cong., 2d Sess., 383, 387 (1972), (1972 U.S. Code Cong.& Admin. News 4989.) Benefits are payable to eligible couples who have income and resources below statutory limits. 42 U.S.C. Section 1382(a) (Appendix p. 23, amended p. 59). The basic entitlement, a flat rate governed by statutory formula, is paid to every eligible individual and couple, 42 U.S.C. Section 1381(a), (appendix P. 14), but is reduced by the amount of "countable" income that individual or couple receives. 42 U.S.C. Section 1382(b) (Appendix p. 28, amended p. 65). In defining countable income, the statute includes earned and unearned income, although there are exclusions. 42 U.S.C. Section 1382(a) (b).

Mrs. Johnson and her husband were, prior to their separation, an "eligible couple" for purposes of SSI computation. 42 U.S.C. Sections 1382(b)(1) and (2), 20 C.F.R. Section 416.1001(a) (Appendix pp. 105-107). According to the statute and regulation, an eligible couple who have separated continue to share a couple's benefit, and cannot receive an individual's grant, until.they have been separated for six months. 42 U.S.C. Section 1382c(b), (Appendix p. 30, amended p. 67). 20 C.F.R. Section 416.1001(a). That benefit level limit is known as the "six-month rule." The six-month rule is not being challenged in this petition.

Nor does Mrs. Johnson quarrel with the six-month rule's limit on the benefit level,[11] but with the two sections of the Claims Manual which contravene the Secretary's regulations, the statutes and the purpose of the SSI legislation.

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[11] By "benefit level," Mrs. Johnson refers to the statutorily prescribed maximum SSI cash grant an individual or couple can recieve. That is to be distinguished from the benefit actually paid. The benefit level, as noted above, is reduced by the amount of countable income received. Here, Mrs. Johnson challenges the method of computing countable income during the six-month period, not the limit of the benefit level.

2. The Claims Manual Contradicts the Provisions of the SSI Statute and the Implementing Regulations

According to Claims Manual Sections 12964(b)(l)(B) and 13144(b), the Secretary does not inquire in this situation, as he does in other areas, (e.g. see 20 C.F.R. §416.220, 20 C.F.R. §416.22, 42 C.F.R. §435.723(d), see f.n.6), how much earned or unearned income a married but separated individual actually receives. The couple is treated as still living together, and the income is assumed to be received by both spouses.

However, the applicable statutes, as interpreted by the Secretary's regulations as adopted in the Code of Federal Regulations applicable in 1978, as well as those presently applicable, prohibit the counting of income which is not actually available. 20 C.F.R. §416.1120, in effect at the time of Mrs. Johnson's denial, stated: "[i]n determining the amount of unearned income the amount actually available to the individual is considered." Actual availability was defined in 20 C.F.R. § 416.1180 as "the first point at which it is available to the individual to use." Likewise, under the present C.F.R.'s, both 20 C.F.R. §416.1002(b) and 20 C.F.R. § 416.1002(d) refer specifically to the couple's benefits level. Similarly, income is defined as "anything you receive in cash or in kind that you can use to meet your needs", 20 C.F.R. § 416.1102, and is to be counted "at the earliest of the following points: "when you receive it or when it is credited to your account or set aside for you to use." 20 C.F.R. § 416.1123. The District Court did not fully read and integrate all of the applicable sections when it ruled (see appendix pp. 104-112 for text of former regulations).

Thus, the Secretary's erroneous interpretation of the SSI program in the Claims Manual directly conflicts with his proper interpretation in the Code of Federal Regulations.

C. The Secretary's Interpretation Is Inconsistent With The Legislative History Of The SSI Program.

The language and history of the Social Security Act mandate that only actually available income be counted for the six months after separation. While the legislative history does not speak specifically to the issue of attributing income, we can gain guidance from the discussions of income by Congress and from the placement of these discussions.

42 U.S.C. section 1382(b)(2) directs the payment of benefits to an otherwise eligible individual be computed by reducing the statutory benefit level by "the amount of income, not excluded pursuant to section 1382(b) of this title, of such individual and spouse." Although it does list certain types of income which are counted or excluded, section 1382a(b) does not otherwise

define the concept of income used in the statute. However, the legislative history does show that rules for computing "income" of the spouse are different than the six-month rule. One indication is the choice of sections of the House Report in which the discussions of the six-month rule and income are placed. The six-month rule is discussed in section D3 on "benefits." Income is separately discussed in section D4 on "determination of income and resources," without reference to the six-month rule. H. Rep. No. 231, 92nd Cong., 1st Sess. (1971) reprinted in (1972) U.S. Code Cong. & Admin. News, 4489, 5136-5139, 5320-5322.

Further, the descriptive reference to the six-month rule in the legislative history is confined to the limit on the maximum benefit level during the first six months of a couple's separation:

> . . . [Y]our committee's bill provides that an eligible individual and spouse will receive a couple's benefit even though apart. Id. at 5136.

Finally, the intent of Congress in enacting SSI is to help those aged, blind and disabled individuals who cannot otherwise subsist because of inadequate income, i.e., income actually available or income which someone is legally obliged to provide. 42 U.S.C. 1381-1383, Schweiker v. Wilson, 450 U.S. 221, 223 (1981). In this case neither definition applies. Mrs. Johnson has no available income and Mr. Johnson is under no obligation to provide her with any.

The intent of Congress manifested in that legislative history is further illuminated when it is placed in the context of this Court's rulings, as will be discussed in the next portion of this brief.

D. The Claims Manual Conflicts with this Court's Previous Interpretation of Available Income.

This Court has consistently ruled that the definition of income means, absent a clear congressional statement to the contrary, income actually available for use.

Neither the discussion under the section on "determination of income and resources," nor any other section of the legislative history of the SSI program, specifically discusses the availability versus the unavailability of income in the circumstances of this case. Greater statutory definition or definitive Congressional treatment was unnecessary because "income" had come to have a clear meaning by the time the SSI program was created in 1972. That definition existed in the programs which SSI superseded (state programs for the elderly, blind, and disabled) and similar programs for the needs of other categories of indigents (Aid to Families with Dependent Children [AFDC], Medicaid and Food Stamps). That definition has become an accepted definition of income. Income meant that which was actually available for use by the grant recipient.

In King v. Smith, 392 U.S. 309 (1968), this Court decided the definition of income in a welfare case. In that case it construed a provision of the Social Security Act, 42 U.S.C. Section 602(a)(7), which was similarly not specific on the definition of income. The section mandated that the income of the child or any relative claiming AFDC, or of any other individual (living in the same home as such child and relative) whose needs the state determines should be considered must be included as the income of an AFDC applicant. The question was whether AFDC could be denied to the children of a mother who "cohabits" in or outside her home with an able-bodied man, a "substitute father," regardless of whether the man is the children's father, is obliged to contribute to their support, or in fact does so.

The regulation restricted resources to those

> . . . that are, in fact, available to an applicant or recipient for current use on a regular basis.

The regulation was held by the Supreme Court to "clearly comport with the statute" and:

> . . . properly exclude from consideration resources which are merely assumed to be available to the needy individual. Id. at 319, fn.16.

Similarly, in Lewis v. Martin, 397 U.S. 552 (1968), AFDC recipients challenged California law and regulations that conclusively presumed that the income of a non-adoptive stepfather, or a man assuming the role of a spouse, (MARS), is available to the children in computing the children's AFDC assistance. Noting again that the Secretary's regulation requiring actual availability clearly comported with the Social Security Act, Id. at 551, 555, the Court held that in the absence of proof of actual contribution, California may not consider the child's resources to include either the income of a nonadopting stepfather who is not legally obligated to support the child or a natural parent, or the income of a man assuming the role of a spouse - whatever the nature of his obligation to support. Id. at 560.

In Shea v. Vialpando, 416 U.S. 251 (1973) the Court reviewed Colorado AFDC regulations which limited an income deduction to a standard amount for work related expenses. Reflecting on the history of the Social Security Act, the Court found that Congress has sought to ensure that only needy families receive aid and that the amount of aid paid is based on the amount needed by the person after the income and resources are considered, i.e., income actually available.

Individualized determinations of income and resources are required and standard deductions were found to be violative of 42 U.S.C. Section 602(a)(7), Id. at 265-266.

Likewise, in Van Lare v. Hurley, 421 U.S. 338 (1975), AFDC recipients challenged New York regulations which require a pro-rata reduction in shelter allowance solely because a parent allows a nonlegally responsible person to reside in the home. Citing to King and Lewis the Court invalidated the State regulations. Again, only actually available income could reduce the benefits.

The applicability of King, Lewis, Shea, and Van Lare is not undermined by this Court's more recent holding in Gray Panthers v. Schweiker, 453 U.S. 34 (1981). In Gray Panthers, this Court held that the "deeming" of income of one spouse to another was allowable when there was a specific statutory basis set forth in the

Social Security Act (42 U.S.C. Section 1396(a)(17)(B)(D)(F)) and when the states could reasonably expect an applicant'-spouse to help pay because that spouse was, in fact, financially responsible. Gray Panthers v. Schweiker, Id. at 45. However, here there is no direct statutory mandate for deeming; and in California if the married couple separates by agreement, as did the Johnsons, there is no obligation on the part of either spouse to support the other one. California Civil Code, §§ 5131, 5118.

In Gray Panthers v. Schweiker, supra, and King v. Smith, supra, this Court paid particular attention to the legal obligations of a spouse or stepparent. In the present case, as in most separations, there is no obligation for support. The rationale of Van Lare v. Hurley is particularly noteworthy:

> A state is barred from assuming that nonlegally responsible persons will supply their resources to aid the welfare child . . . 421 U.S. at 347.

As in Van Lare, the Social Security Administration should not be allowed to count Mr. Johnson's two pensions as income available to Mrs. Johnson. Absent a judicial decree requiring payment, Mr. Johnson is under no legal obligation to provide her with funds.

The six-month rule is prophylactic in nature intending to prevent sham spearations in which the couples' income would be increased by faking a separation. Such statutory classifications are rationally related to a legislative goal of saving the taxpayers money. Weinberger v. Salfi, 422 U.S. 749, 781 (1975). However, such is not the case here. Congress has not, as it did in Gray Panthers v. Schweiker, supra, placed a specific caveat limiting or defining income as between the two couples within the benefit level. It certainly did not include counting income from a nonlegally responsible spouse.

In this instance, the Claims Manual section does not enhance any state interest. Nor does it prevent damage to the government coffers. The Secretary's interpretation is simply punitive in nature. It punishes the spouse not having other income, either earned or unearned. More than punitive, the sections are unfair and arbitrary because they allow people such as Mr. Johnson to get more than they would otherwise be allowed. Mr. Johnson received the $63.15 in addition to the $468.10 in pensions, for six months after separating, when the allowable individual's grant was only $307.[10/]

[10/] This overpayment is also not recoupable because of the "deeming" of income to Mrs. Johnson.

The Secretary's interpretation is totally contrary to the intent of the statute and this Court's past interpretations of the statute; it serves no legitimate governmental function and should be overturned.

E. Congress Intended That Fair Procedures Be Used In Implementing The Purposes and Intent of The Social Security Act.

The intent of the Supplemental Security Income statute is to provide a subsistence leveal income for the aged, blind and disabled. Schweiker v. Wilson, supra. In interpreting the SSI program through the Claims Manual, the Secretary is constrained by those purposes. Therefore, the Secretary must adopt procedures which are fair to those receiving Supplemental Security Income. As this Court noted in Greene v. McElroy, 360 U.S. 474, 508 (1958) there exists the

> . . . Court's concern that traditional forms of fair procedure not be restricted by implication or without the most explicit action by the Nation's lawmakers, even

> in areas where it is possible that the Constitution presents no inhibition. (Emphasis added.)

Recently this Court interpreted certain Social Security regulations created under the Social Security Act. It ruled:

> In particular, this Court has been willing to assume a congressional solicitude for fair procedure, absent explicit statutory language to the contrary. Califano v. Yamasaki, 442 U.S. 682, 693 (1979).

Mrs. Johnson is asking for nothing more than a fair procedure; one that takes into consideration the intent of the statute and her individual needs. She is simply asking that income not be counted against a grant intended to provide subsistence level support unless it is actually available to her. She is not asking that the benefits level be increased nor that the Government pay any extra money, simply that the Government adopt fair procedures that effectuate the purposes of the statute.

The failure of the Secretary to adopt a fair procedure is contrary to the intent and purposes of the Social Security Act, as well as the rulings of this Court.

CONCLUSION

In creating the Supplemental Security Income program, Congress clearly intended to provide for the needs of those aged, blind and disabled persons needing income maintenance. The Secretary's interpretation of the statute ignores the implementing statutes as well as the regulations. Further, the Secretary's interpretation ignores the judicial precedent established by this Court in defining both income and fair procedures. This issue affects thousands of people, most of whom are women. It is a substantial federal question which must be decided by this Court.

For the reasons stated, petitioner respectfully requests that this Court grant certiorari to review the decision of the Ninth Circuit Court of Appeals.

MARY BURDICK
DAN STORMER

By____________________
DAN STORMER
COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE BY MAIL

I, DEBORAH KLINGER, declare:

That I am a resident of the United States and employed in Los Angeles County, California; that my business address is 3535 West Sixth Street, Los Angeles, California 90020; that I am over the age of eighteen years and am not a party to the above-entitled action;

That I am employed in the office of a member of the Bar of the United States Supreme Court, at whose direction the service by mail described in this Certificate was made; that on May 12, 1982, I deposited in the United States mail in the City of Los Angeles, County of Los Angeles, State of California, in the above-entitled action, in an envelope bearing the requisite postage, two copies of:

PETITION FOR WRIT OF CERTIORARI AND APPENDIX, addressed to:

G. WILLIAM HUNTER
United States Attorney
GEORGE C. STOLL
Assistant United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

at their last known address, at which place there is a delivery service by United States mail.

Executed this 12th day of May, 1981, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Deborah Klinger
DEBORAH KLINGER

81-2106

No. ________

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

Office - Supreme Court, U.S.
FILED
MAY 15 1982
ALEXANDER L. STEVAS,
CLERK

MARIE JOHNSON,

Petitioner,

vs.

SECRETARY OF HEALTH &
HUMAN SERVICES,

Respondents.

APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MARY BURDICK
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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARIE JOHNSON,)
)
Plaintiff-Appellant,) NO. 80-4363
)
v.) D.C. #CV79-1382
)
SECRETARY OF HEALTH &) MEMORANDUM
HUMAN SERVICES,)
)
Defendant-Appellee.)
)

Argued and Submitted - January 12, 1982

Decided - February 11, 1982

Appeal from the United States District Court
for the District of Northern California
William A. Ingram, District Judge, Presiding

Before: BROWNING, Chief Judge, and SKOPIL and
NORRIS, Circuit Judges.

Johnson appeals a district court's summary judgment in favor of the Secretary of Health & Human Services. On appeal, she contends that the district court erred in upholding the agency's construction of certain regulations. Under the agency's construction of the regulations, the Secretary did not determine the actual availability of unearned income to Johnson in calculating her Supplemental Security

Income (SSI) benefits during the first six months of her separation from her husband.

For the reasons expressed in the district court's memorandum, Excerpt of Record at 43-47, we find no "compelling indications that [the agency's construction of the regulations] is wrong." Miller v. Youakim, 440 U.S. 125, 144 n.25 (1979) (citing Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 381 (1969)). This court declines to consider Johnson's contention that the regulations are unconstitutional, because she failed to raise this issue before the district court and there appear to be no circumstances indicating that injustices might result if this court does not review this issue. See Fitzgerald v. Century Park, Inc., 642 F.2d 356, 359 (9th Cir. 1981).

The judgment is affirmed.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIE JOHNSON,
Plaintiff,
v.
SECRETARY OF HEALTH,
EDUCATION & WELFARE,
Defendant.

NO. C-79-1382-WAI

JUDGMENT

For the reasons contained in this Court's ORDER granding defendant's motion for summary judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion for summary judgment by defendant herein is granted, that the case is dismissed, and that each party shall bear its own costs.

DATED: May 8, 1980.

WILLIAM A. INGRAM
United States District
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARIE JOHNSON,)
) NO. C-79-1382-WAI
Plaintiff,)
) ORDER
v.)
)
SECRETARY OF HEALTH,)
EDUCATION & WELFARE,)
)
Defendant.)
)

Plaintiff claims that the Secretary's failure to ascertain the actual availability to plaintiff of unearned income for purposes of calculating plaintiff's Supplemental Security Income (SSI) benefits during the first six months of plaintiff's separation from her husband was unlawful. The Secretary has issued a final decision adverse to plaintiff, who seeks review of the Secretary's decision by this Court pursuant to 42 U.S.C. § 1383(c).

After sixteen years of marriage, plaintiff and her husband separated in September, 1978. Prior to the separation, plaintiff and her husband had been receiving a monthly SSI payment of $126.30. That figure was computed by subtracting $448.10 unearned income received by plaintiff's husband each month from the applicable SSI couple maximum of $574.00.

Following the separation, plaintiff's husband retained all of his unearned income, plaintiff receiving no financial support from him. For the first six months after the separation, plaintiff and her husband each received one-half of their previous SSI payment, or $63.15 per month. Plaintiff believes that she should have received one-half the SSI couple maximum during those six months, because her husband's additional unearned income was not available to her.

Plaintiff and her husband were, prior to their separation, an "eligible couple" for purposes of SSI computation. 42 U.S.C. § 1382c(b), 20 C.F.R. 416.1001(a). An eligible couple may receive more SSI than one individual, but less than two individuals who are not an eligible couple. 42 U.S.C. § 1382 (b)(1) and (2), 20 C.F.R. 416.1001(a).

According to statute and regulation, an eligible couple who have separated continue to be treated as an eligible couple until they have been separated for six months. 42 U.S.C. § 1382c(b), 20 C.F.R. 416.1001(a). Such provisions are intended to discourage sham separations aimed at increases in SSI payments. H.R.Rep. No. 231, 92d Cong., 1st Sess. 150 (1971).

Plaintiff here does not quarrel with the six-month rule, but with sections of the Claims Manual which allegedly contravene the Secretary's regulations and the purpose of SSI legislation. The effect of Claims Manual § 13144 is that the Secretary does not inquire as to how much unearned income a married but separated individual actually receives. The couple is treated as still living together, and the income is assumed to be received by both spouses.

Plaintiff contends that the Secretary's consideration of her husband's unearned income as available to her, without a factual basis for that presumption of availability, was in conflict with 20 C.F.R.

416.1120. That section of the regulations provides that "[i]n determining the amount of unearned income the amount actually available to the individual is considered. (Emphasis added)

We do not agree with plaintiff that the Claims Manual in conflict with the regulations.

It is significant that 20 C.F.R. §416.1001(a) Marital Relationship, provides that:

> "In determining whether an aged blind, or disabled individual may receive payments under Title XVI of the Social Security Act, the income and resources tests which such individual must meet (see Subparts K and L of this Part 416) may depend in part on whether such individual has a spouse, [and] whether such individual and such spouse are living in the same household (or have been separated for less than 6 months). . .[I]f such husband and wife have been separated for less than 6 months. . .such payments shall be made to them as a couple."

Thus, the actual availability requirement in § 416.1120, which is in Subpart K of Part 416, is subordinate to the provision in § 416.1001(a) that for the first six months of separation, a couple will be treated as if they are still living together. The challenged Claims Manual section does not conflict with these regulations.

Furthermore, cases cited by plaintiff do not directly involve the regulations here at issue. Kimmes v. Califano, 472 F. Supp. 474 (D. Colo. 1979) did not address the availability of cash payments, such as monthly SSI installments, but dealt with imputing in-kind income in the form of bargain housing to an SSI recipient. Kimmes did not involve the attribution of income to one of two parties, but to one party only.

The issue in Woods v. Miller, 318 F. Supp. 510 (W.D. Pa. 1970), another case cited by plaintiff, was whether the state of Pennsylvania could by regulation impose a requirement that AFDC recipients initiate court action for support against relatives. Actual availability of funds was not the issue in that case.

Manfredi v. Maher, 435 F. Supp. 1106 (D. Conn. 1977) is also distinguishable from the case at hand. *Manfredi* explicitly did not involve SSI eligibility, and the court addressed the reasonableness of assuming that two persons maintain a single household, when one member of the couple was confined to a long-term medical facility. The court in *Manfredi* relied on Medicaid legislative history, which stressed that spouses were obligated to support each other if able. That court did not consider the type of abuse envisioned by the authors of the six-month rule. Cf. *Mansfield v. Weinberger*, 398 F. Supp. 965, 969 (D.D.C. 1975).

Plaintiff does not find the six-month presumption of cohabitation unfair *per se* because, she asserts, it does not mandate the result reached by the Secretary in this case. Plaintiff proposes a rule establishing an SSI benefits ceiling for married but separated individuals equal to one-half the ceiling for an eligible couple. Plaintiff maintains that such a ceiling would prevent sham separations by removing the possibility that both partners could collect individual benefits during the first six months of separation, which at the same time it would promote fairness by acknowledging that the couple has ceased to be one financial unit.

Plaintiff's solution, while appealing at first glance, would be susceptible to abuse. Under plaintiff's proposed rule, spouses in the same circumstances as the plaintiff and her husband could collaborate to increase their SSI payments through their separation, simply by agreeing that they would not share any unearned income.

The necessity of deciding the actual availability of unearned income to individual spouses during the first six months of separation would increase the Secretary's already enormous administrative burden. That increased burden was a legitimate concern of Congress when it included the six-month rule in SSL legislation. Cf. Weinberger v. Salfi, 422 U.S. 749, 784 (1975).

Because the actions of the Secretary here at issue have not contravened the relevant statutory and regulatory provisions, summary judgment is hereby granted to defendant. Plaintiff's motion for summary judgment is denied.

DATED: May 8, 1980.

WILLIAM A. INGRAM
United States District Judge

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§ 1381. Statement of purpose; authorization of appropriations

For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

Aug. 14, 1935, c.531, Title XVI, § 1601, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1465.

Section 1381a. Basic entitlement to benefits.

Every aged, blind, or disabled individual who is determined under part A to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Secretary of Health, Education, and Welfare.

Aug. 14, 1935, c. 531, Title XVI, § 1602, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1465.

Section 1382. Eligibility for benefits -- Definition of eligible individual.

(a)(1) Each aged, blind, or disabled individual who does not have an eligible spouse and --

(A) whose income, other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1382b(a) of the title, are not more than (i) in case such individual has a spouse with whom he is living, $2,250, or (ii) in case such individual has no spouse with whom he is living, $1,500,

shall be an eligible individual for purposes of this subchapter.

(2) Each aged, blind, or disabled individual who has an eligible spouse and --

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with

the resources of such spouse, other than resources excluded pursuant to section 1382b(a) of this title, are not more than $2,250,

shall be an eligible individual for purposes of this subchapter.

Amount of benefits.

(b)(1) The benefit under this subchapter for an individual who does not have an eligible spouse shall be payable at the rate of $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual

(2) The benefit under this subchapter for an individual who has an eligible spouse shall be payable at the rate of $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual and spouse.

Period for determination of benefits, redetermination of eligibility and amount of benefits; effective date of application.

(c)(1) An individual's eligibility for benefits under this subchapter and the amount of such benefits shall be determined for each quarter of a calendar year excpet that, if the initial application for benefits is filed in the second or third month of a calendar quarter, such determinations shall be made for each month in such quarter. Eligibility for and the amount of such benefits for any quarter shall be redetermined at such time or times as may be provided by the Secretary.

(2) For purposes of this subsection an application shall be considered to be effective as of the first day of the month in which it was actually filed.

Limitation on amount of gross income earned; definition of gross income

(d) The Secretary may prescribe the circumstances under which, consistently with the purposes of this subchapter, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this subchapter. For purposes of this subsection, the term "gross income" has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1954.

Limitation on eligibility of certain individuals.

(e)(1)(A) Except as provided in subparagraph (B), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter, the benefit under this subchapter for such individual for such month shall be payable --

(i) at a rate not in excess of $300 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who does not have an eligible spouse;

(ii) at a rate not in excess of the sum of the applicable rate specified in subsection (b)(1) of this section and the rate of $300 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home, or facility throughout such month; and

(iii) at a rate not in excess of $600 per year (reduced by the amount of any inomce not excluded pursuant to section 1382a(b) of this title) in the case of an individual who has an eligible spouse, if both of them are in such a hospital, home, or facility throughout such month.

(2) No person shall be an eligible individual or eligible spouse for purposes of this subchapter if, after notice to such person by the Secretary that it is likely that such person is eligible for any payments of the type enumerated in section 1382a(a)(2)(B) of this title, such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3)(A) No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1382c (a)(3) of this title) shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if such individual is medically determined to be a drug addict or an alcoholic unless such individual is undergoing any treatment that may be appropriate for his condition as a drug addict or alcoholic (as the case may be) at an institution or facility approved for purposes of this paragraph by the Secretary (so long as such treatment is available) and demonstrates that he is complying with the terms, conditions, and requirements of such treatment and with requirements imposed by the Secretary under subparagraph (B).

(B) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this subchapter and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirement is contributing to the achievement of the purposes of this subchapter. The Secretary shall annually submit to the Congress a full and complete report on his activities under this paragraph.

Individuals outside United
States; determination of
status.

(f) Notwithstanding any other provision of this subchapter, no individual shall be considered an eligible individual for purposes of this subchapter for any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this subchapter with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

Individuals deemed to meet resources test

(g) In the case of any individual or any individual and his spouse (as the case may be) who --

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter, I, X, XIV, or XVI of this chapter,

(2) has, since December 13, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 13, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in subsections (a)(1)(B) and (a)(2)(B) of this section during any period that the resources of such individual or individuals and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

Individuals deemed to meet income test

(h) In determining eligibility for, and the amount of, benefits payable under this section in the case of any individual or any individual and his spouse (as the case may be) who --

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter X or XVI of this chapter,

(2) is blind under the definition of that term in the plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973,

(3) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(4) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

there shall be disregarded an amount equal to the greater of (A) the maximum amount of any earned or unearned income which could have been disregarded under the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973, and (B) the amount which would be required to be disregarded under section 1382a of this title without application of this subsection.

Aug. 14, 1936, c. 531, Title XVI, § 1611, as added Oct. 30, 1972, Pub. L. 92-603, Title III, § 301, 86 Stat. 1466, and amended July 9, 1973, Pub.L. 93-66, Title II, § 210(a), (b), 87 Stat. 154; Dec. 31, 1973, Pub.L. 93-233, §§ 4(b)(1), (2), 18(d), (e), 87 Stat. 953, 968; Aug. 7, 1974, Pub.L. 93-368, § 6(a), 88 Stat. 421.

§ 1382a. Income; definition of earned and unearned income; exclusions from income.

(a) For purposes of this subchapter, income means both earned income and unearned income; and --

(1) earned income means only --

(A) wages as determined under section 403(f)(5)(C) of this title; and

(B) net earnings from self-employment, as defined in section 411 of this title (without the application of the second and third sentences following subsection (a)(10), and the last paragraph of subsection (a)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c); and

(2) unearned income means all other income, including --

(A) support and maintenance furnished in cash or kind; except that in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1382 of this title shall be reduced by 33-1/3 percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph;

(B) any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement, annuities and pensions, and unemployment insurance benefits;

(C) Prizes and awards;

(D) the proceeds of any life insurance policy to the extent that they exceed the amount expended by the beneficiary for purposes of the insured individual's last illness and burial or $1,500, whichever is less;

(E) gifts (cash or otherwise), support and alimony payments, and inheritances; and

(F) rents, dividends, interest, and royalties.

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded --

(1) subject to limitations (as to amount or otherwise) prescribed by the Secretary, if such individual is a child who is, as determined by the Secretary, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual;

(3)(A). the total unearned income of such individual (and such spouse, if any) in a calendar quarter which, as determined in accordance with criteria prescribed by the Secretary, is received too infrequently or irregularly to be included, if such income so received does not exceed $60 in such quarter, and (B) the total earned income of such individual (and such spouse, if any) in a calendar quarter which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed $30 in such quarter;

(4)(A) if such individual (or such spouse) is blind ([1] and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1202 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan,

(B) if such individual (or such spouse) is disabled but not blind ([1] and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1352 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, and (ii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan, or

(C) if such individual (or such spouse) has attained age 65 and is not included under subparagraph (A) or (B), the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof:

(5) any amount received from any public agency as a return or refund of taxes paid on real property or on food purchased by such individual (or such spouse);

(6) assistance described in section 1382e(a) of this title which is based on need and furnished by any State or political subdivision of a State;

(7) any portion of any grant, scholorship, or fellowship received for use in paying the cost of tuition and fees at any educational (including technical or vocational education) institution;

(8) home produce of such individual (or spouse) utilized by the household for its own consumption;

(9) if such individual is a child one-third of any payment for his support received from an absent parent; and

(10) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home

as such individual and was placed in such home by a public or nonprofit private child-placement or child-care agency.

Aug. 14, 1935, c.531, title XVI, § 1612, as added Oct. 30, 1972, Publ.L. 92-603, Title III, § 301, 86 Stat. 1468.

---

[1] So in original. There is no closing parenthesis.

§ 1382b. Resources; exclusions from resources; disposition of resources.

(a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded --

(1) the home (including the land that appertains thereto), to the extent that its value does not exceed such amount as the Secretary determines to be reasonable;

(2) household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Secretary determines to be reasonable;

(3) other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan; and

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(h) and Section 1607(c) of Title 43.

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

(b) The Secretary shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

Aug. 14, 1935, c.531, Title XVI, § 1613, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1470.

§ 1382c. Definitions.

(a)(1) For purposes of this subchapter, the term "aged, blind, or disabled individual" means an individual who --

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1153(a)(7) or section 1182(d)(5) of Title 8).

(2) An individual shall be considered to be blind for purposes of this subchapter if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this subchapter if he is blind as defined under a State plan approved under subchapter X or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) An individual shall be considered to be disabled for puposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate are in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnositc techniques.

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria, except for purposes of paragraph (4), shall be found not to be disabled.

(E) Nothwithstanding the provisions of subparagraphs (A) through (D), an individual shall also be considered to be disabled for purposes of this subchapter if he is permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(4)(A) For purposes of this subchapter, any services rendered during a period of trial work (as defined in subparagraph (B) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

(B) The term "period of trial work", with respect to an individual who is aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this subchapter on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this subchapter on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(i) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).

(b) For purposes of this subchapter, the term "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an "eligible individual" within the meaning of section 1382(a) of this title.

(c) For purposes of this subchapter, the term "child" means an individual who is neither married nor (as determined by the Secretary) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determinded by the Secretary) a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment.

(d) In determining whether two individuals are husband and wife for purposes of this subchapter, appropriate State law shall be applied; except that --

(1) if a man and women[1] have been determined to be husband and wife under section 416(h)(1) of this title for purposes of subchapter II of this chapter they shall be considered (from and after the date of such determination or the date of their application for benefits under this subchapter, whichever is later) to be husband and wife for purposes of this subchapter, or

(2) if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered for the purposes of this subchapter notwithstanding any other provision of this section.

(e) For purposes of this subchapter, the term "United States," when used in a geographical sense, means the 50 States and the District of Columbia.

(f)(1) For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

(2) For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 21, such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

Aug. 14, 1935, c.531, Title XVI, § 1614, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1471, and amended Dec. 31, 1973, Pub.L. 93-233, §9, 87 Stat.957.

§ 1382d. Rehabilitation services for blind and disabled individuals -- Referral by Secretary of eligible individuals to appropriate State Agency; review by Secretary of individual's blindness or disability and need for services.

(a) In the case of any blind or disabled individual who --

(1) has not attained age 65, and

(2) is receiving benefits (or with respect to whom benefits are paid) under this subchapter,

the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act, and (except in such cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the rehabilitation services made available to him under such plan.

Acceptance by referred individuals of services; payment by Secretary to State agency of costs of providing services to referred individuals

(b) Every individual with respect to whom the Secretary is required to make provision for referral under subsection (a) of this section shall accept such rehabilitation services as are made available to him under the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act; and the Secretary is

authorized to pay to the State agency administering or supervising the administration of such State plan the costs incurred in the provision of such services to individuals so referred.

(c) No individual shall be an eligible individual or eligible spouse for purposes of this subchapter if he refuses without good cause to accept vocational rehbilitation services for which he is referred under subsection (a) of this section.

Aug. 14, 1935, c.531, Title XVI, §1615, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1474.

§ 1382e. Supplementary assistance by State or subdivision to needy individuals -- Exclusion of cash payments in determination of income of individuals for purposes of eligibility for benefits; agreement by Secretary and State for Secretary to make supplementary payments on behalf of State or subdivision.

(a) Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this subchapter or who would but for their income be eligible to recieve benefits under this subchapter, as assistance based on need in supplementation of such benefits (as determined by the Secretary), shall be excluded under section 1382a(b)(6) of this title in determining the income of such individuals for purposes of this subchapter and the Secretary and such State may enter into an agreement which satisfies subsection (b) of this section under which the Secretary will, on behalf of such State (or subdivision) make such supplementary payments to all such individuals.

Agreement between Secretary and State; contents

(b) Any agreement between the Secretary and a State entered into under subsection (a) of this section shall provide --

(1) that such payments will be made (subject to subsection (c) of this section) to all individuals residing in such State (or subdivision) who are receiving benefits under this subchapter, and

(2) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other

general administrative provisions, as the Secretary finds necessary (subject to subsection (c) of this section) to achieve efficient and effective administration of both the program which he conducts under this subchapter and the optional State supplementation

Residence requirement by State or subdivision for supplementary payments; disregarding of amounts of certain income by State of subdivision in determining eligibility for supplementary payments

(c)(1) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Secretary under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(2) Any State (or political subdivision), in determining the eligibility of any individual for supplementary payments described in subsection (a) of this section, may disregard amounts of earned and unearned income in addition to other amounts which it is required or permitted to disregard under this section in determining such eligibility, and shall include a provision specifying the amount of any such income that will be disregarded, if any.

Payment to Secretary by State of amount equal to expenditures by Secretary as supplementary payments; time and manner of payment by State

(d) Any State which has entered into an agreement with the Secretary under this section which provides that the Secretary will, on behalf of the State (or political subdivision), make the supplementary payments to individuals who are receiving benefits under this subchapter (or who would but for their income be eligible to receive such benefits), shall, at such times and in such installments as may be agreed upon between the Secretary and such State, pay to the Secretary an amount equal to the expenditures made by the Secretary as such supplementary payments.

Reduction of supplemental security
income payments to individuals
provided institutional medical
or other remedial care, State
financed under Federal grants for
medical assistance

(e) Payments made under this subchapter with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a) of this section) or other payment made by a State (or political subdivision thereof) which is made for or on account of any medical or any other type of remedial care provided by an institution to such individuals as an inpatient of such institution in the case of any State which has a plan approved under subchapter XIX of this chapter if such care is (or could be) provided under a State plan approved under subchapter XIX of this chapter by an institution certified under such subchapter XIX.

Aug. 14, 1935, c.531, Title XVI, § 1616, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1474, and amended Dec. 31, 1973, Pub.L. 93-233, §14, 87 Stat. 965.

§ 1382f. Cost-of-living adjustments in benefits

Whenever benefit amounts under subchapter II of this chapter are increased by any percentage effective with any month as a result of determination made under section 415 (i) of this title, each of the dollar amounts in effect for such month under subsections (a) (1)(A), (a)(2)(A), (b)(1), (b)(2) of section 1382, and subsection (a)(1)(A) of section 211 of Public Law 93-66, as specified in such subsections or as previously increased under this section, shall be increased by the same percentage (and rounded when not a multiple of $1.20, to the next higher multiple of $1.20), effective with respect to benefits for months after such month; and such dollar amounts as so increased shall be published in the Federal Register together with, and at the same time as, the material required by section 415(i)(2)(D) of this title to be published therein by reasons of such determination.

Aug. 14, 1935, c. 531, Title XVI, § 1617, as added Aug. 7, 1974, Pub. L. 93-368 § 6(b), 88 Stat. 421.

§ 1383. Procedure for payment of benefits - Time, manner, form and duration of payments; promulgation of regulations

(a)(1) Benefits under this subchapter shall be paid at such time or times and in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title, the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).

(3) The Secretary may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Secretary -

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding $100; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability for a period not exceeding 3 months prior to the determination of such individual's disability, if such individual is presumptively disabled and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) of this section solely because such individual is determined not to be disabled.

(5) Payment of the benefit of any individual who is an aged, blind or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

Overpayments and underpayments; adjustment, recovery, or payment of amounts by Secretary

(b) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the suceeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter.

Hearing for eligible individual or eligible spouse where eligibility or amount of benefit is in question; time for request for hearing; time for determinations pursuant to hearing; finalilty and conclusiveness of determinations of Secretary

(c)(1) The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within thirty days after notice of such determination is received.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves the existence of a disability (within the meaning of section 1382c(a)(3) of this title), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Secretary's final determinations under section 405 of this title; except that the determination of the Secretary after such hearing as to any fact shall be final and conclusive and not subject to review by any court.

Applicability of procedural requirements; prohibition on assignment of payments; appointment of hearing examiners; representation of claimants; maximum fees; violations; penalties

(d)(1) The provisions of section 407 of this title and subsections (a), (d), (e), and (f) of section 405 ofthis title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

(2) To the extent the Secretary finds it will promote the achievement of the objectives of this subchapter, qualified persons may be appointed to serve as hearing examiners in hearings under subsection (c) of this section without meeting the specific standards prescribed for hearing examiners by or under subchapter II of chapter 5 of Title 5.

(3) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this subchapter, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be

charged for services performed in connection with any claim before the Secretary under this subchapter, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this subchapter by word, circular, letter, or advertisement, or who shall knowingly charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

Administrative requirements prescribed by Secretary; criteria; reduction of benefits to individual for noncompliance with requirements

(e)(1)(A) The Secretary shall, subject to subparagraph (B), prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(B) The requirements prescribed by the Secretary pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.

(2) In case of failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this subchapter as required by the Secretary (in addition to taking any other action he may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this subchapter by -

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and

(C) $100 in the case of the third or a subsequent such failure or delay.

except where the individual was without fault or good cause for such failure or delay existed.

Furnishing of information by Federal agencies

(f) The head of any Federal agency shall provide such information as the Secretary needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

Reimbursement to States for Interim assistance payments; definitions; agreement; hearing provisions inapplicable to disagreements concerning payments; termination date; report to Congress

(g)(1) Notwithstanding subsection (d)(1) of this section and subsection (b) of this section as it relates to the payment of less than the correct amount of benefits, the Secretary may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Secretary and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term "benefits" with respect to any individual means supplemental security income benefits under this subchapter, and any State supplementary payments under section 1382e of this title or under section 212 of Public Law 93-66 which the Secretary makes on behalf of a State (or political subdivision thereof), that the Secretary has determined to be due with respect to the individual at the time the Secretary makes the first payment of benefits. A cash advance made pursuant to subsection (a)(4)(A) of this section shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term "interim assistance" with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs during the period, beginning with the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Secretary which shall provide -

(A) that if the Secretary makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Secretary finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this subchapter, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsections (c) of this section shall not be applicable to any disagreement concerning payment by the Secretary to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

(6) The provisions of this subsection shall expire on June 30, 1976. At least sixty days prior to such expiration date, the Secretary shall submit to Congress a report assessing the effects of actions taken pursuant to this subsection, including the adequacy of interim assistance provided and the efficiency and effectiveness of the administration of such provisions. Such report may include such recommendations as the Secretary deems appropriate.

Aug. 14, 1935, c. 531 Title XVI, § 1631, as added Oct. 30, 1972, Pub. L. 92-603, Title III, § 301, 86 Stat. 1475, and amended Dec. 31, 1973, Pub.L. 93-233, § 18(g), 87 Stat. 969; Aug. 7, 1974, Pub.L. 93-368, § 5, 88 Stat. 420.

§ 1383a. Fraudulent acts; penalties.

Whoever --

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to recieve any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

Aug. 14, 1935, c.531, Title XVI, § 1632, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1478.

§ 1383b. Administration.

(a) Subject to subsection (b) of this section, the Secretary may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 1382c(a)(2) and (3) of this title in the same manner and subject to the same conditions as provided with respect to disability determinations under section 421 of this title) as may be necessary or appropriate to carry out his functions under this subchapter.

(b) In determining, for purposes of this subchapter, whether an individual is blind, there shall be an examination of such individual by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.

Aug. 14, 1935, c.531, Title XVI, § 1633, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1478, and amended July 9, 1973, Pub.L. 93-66, Title II, § 214, 87 Stat. 158.

§ 1383c. Eligibility for medical assistance of aged, blind, or disabled individuals under State's medical assistance plan; determination by Secretary pursuant to agreement between Secretary and State; costs.

The secretary may enter into an agreement with any State which wishes to do so under which he will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals under such State's plan approved under subchapter XIX of this chapter. Any such agreement shall provide for payments by the State, for use by the Secretary in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under this subchapter, the Secretary shall include only those costs which are additional to the costs incurred in carrying out this subchapter.

Aug. 14, 1935, c.531, Title XVI, § 1634, as added Oct. 30, 1972, Pub.L. 92-603, Title III, § 301, 86 Stat. 1478.

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§ 1382. Eligibility for benefits

Retrospective accounting; relevant considerations; effective date of application; waiver of limitations

(c)(1) An individual's eligibility for a benefit under this subchapter for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraph (2), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Secretary so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Secretary.

(2) The amount of such benefit for the month in which application for such benefits is filed or, if the Secretary so determines, for such month and the following month, and for any month following a month of ineligibility for such benefits (or, if the Secretary so determines, such month and the following month) shall be determined on the basis of the individual's (and eligible spouse's, if any) income and other relevant circumstances in such month.

(3) For purposes of this subsection, an application shall be effective as of the first day of the month in which it is filed.

(4) The Secretary may waive the limitations specified in subparagraphs (A) and (B) of subsection (e)(1) of this

section on an individual's eligibility and benefit amount for a month (to the extent either such limitation is applicable by reason of such individual's presence throughout such month in a hospital, extended care facility, nursing home, or intermediate care facility) if such waiver would promote the individual's removal from such institution or facility. Upon waiver of such limitations, the Secretary shall apply, to the month preceding the month of removal, or, if the Secretary so determines, the two months preceding the month of removal, the benefit rate that is appropriate to such individual's living arrangement subsequent to his removal from such institution or facility.

Limitation on eligibility of certain individuals

(e)(1)(A) Except as provided in subparagraph (B) and (C), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter, the benefit under this subchapter for such individual for such month shall be payable

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home or facility throughout such month, at a rate not in excess of the sum of--

(I) the rate of $300 per year (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the one who is in such hospital, home, or facility), and

(II) the applicable rate specified in subsection (b)(1) reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other); and

(C) As used in subparagraph (A), the term "public institution" does not include a publicly operated community residence which serves no more than 16 residents.

(4) No benefit shall be payable under this subchapter except as provided in section 1382h of this title (or section 1382e(c)(3) of this title), with respect to an eligible individual or his eligible spouse who is an aged, blind, or disabled individual solely by application of section 1382c(a)(3)(F) of this title for any month, after the third month, in which he engages in substantial gainful activity during the fifteen-month period following the end of his trial work period determined by application of section 1382c(a)(4)(D)(i) of this title.

As amended Oct. 20, 1976, Pub.L. 94-566, Title V, §§ 502, 505(a), 90 Stat. 2685, 2686; June 9, 1980, Pub.L. 96-265, Title III, § 303(c)(2), 94 Stat. 453; Aug. 13, 1981, Pub.L. 97-35, Title XXIII, § 2341(a), 95 Stat. 865.

§ 1382a Income; definition of earned and unearned income; exclusions from income

(a) For purposes of this subchapter, income means both earned income and unearned income; and

(1) earned income means only

(A) wages as determined under section 403(f)(5)(C) of this title;

(B) net earnings from self-employment, as defined in section 411 of this title (without the application of the second and third sentences following subsection (a)(10), and the last paragraph of subsection (a)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c);

(C) any refund of Federal income taxes made by reason of section 43 of Title 26 (relating to earned income credit) and any payment made by an employer under section 3507 of Title 26 (relating to advance payment of earned income credit); and

(D) remuneration received for services performed in a sheltered workshop or work activities center; and

(2) unearned income means all other income, including--

(A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollars amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1382 of this title shall be reduced by 33 1/3 percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph, (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit insititution, support and maintenance shall not be included to the extent that it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization, and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applicable in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) as his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief Act of 1974, and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (II) because of such catastrophe;

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded--

(2)(A) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual;

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;

(3)(A) the total unearned income of such individual (and such spouse, if any) in a month which, as determined in accordance with criteria prescribed by the Secretary, is received too infrequently or irregularly to be included, if such income so received does not exceed $20 in such month and (B) the total earned income of such individual (and such spouse, if any) in a month, which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed $10 in such month;

(B) if such individual (or such spouse) is disabled but not blind ([1] and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1352 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, (ii) such additional amounts of earned income of such individual (for purposes of determining the amount of his or her benefits under this subchaper and of determining his or her eligiblity for such benefits for consecutive months of eligibility after the initial month of such eligibility), if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care, services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan, or

(6) assistance, furnished to or on behalf of such individual (and spouse), which is based on need and furnished by any State or political subdivision of a State;

(9) if such individual is a child one-third of any payment for his support received from an absent parent;

(10) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home as such individual and was placed in such home by a public or non-profit private child-placement or child-care agency;

(11) assistance received under the Disaster Relief Act of 1974 or other assistance provided pursuant to a Federal statute on account of a catastrophe which is declared to be a major disaster by the President; and

(12) interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period).

As amended Oct. 26, 1974, Pub.L. 93-484, § 4, 88 Stat. 1460; Jan. 2, 1976, Pub.L. 94-202; § 9, 89 Stat. 1140; June 30, 1976, Pub.L. 94-331, §§ 2(a), 4(a), 90 Stat. 781, 782; Oct. 4, 1976, Pub.L. 94-455, Title XXI, § 2125, 90 Stat. 1920; Oct. 20, 1976, Pub.L. 94-566, Title V, § 505(b), 90 Stat. 2686; Nov. 12, 1977, Pub.L. 95-171, § 8(a), 91 Stat. 1355; Apr. 1, 1980, Pub.L. 96-222, Title I, § 101(a)(2)(B), 94 Stat. 195; June 9, 1980, Pub.L. 96-265; Title II, § 202(a), Title III, § 302(b), 94 Stat. 449, 451; Oct. 19, 1980, Pub.L. 96-473, § 6(g), 94 Stat. 2266; Aug. 13, 1981, Pub.L. 97-35, Title XXIII, § 2341(b) 95 Stat. 865.

§ 1382b. Resources; exclusions from resources; dispostion of resources.

(a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded--

(1) the home (including the land that appertains thereto);

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Secretary as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606 (h) and section 1607(c) of Title 43; and

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1382a (b)(12) of this title.

(c)(1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a) of this section) any resource (or interest therein) owned by such individual or eligible spouse within the preceding 24

months if such individual or eligible spouse gave away or sold such resource or interest at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assitance under this chapter.

(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this chapter unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.

As amended Oct. 20, 1976, Pub.L. 94-569, § 5, 90 Stat. 2700; Nov. 12, 1977, Pub.L. 95-171, § 9(a), 91 Stat. 1355; Dec. 28, 1980, Pub.L. 96-611, § 5(a), 94 Stat. 3567.

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe. Notwithstanding the provisions of subparagraph (b), an individual whose services or earnings meet such criteria, except for purposes of subparagraph (F) or paragraph (4), shall be found not to be disabled.

(F) For purposes of this subchapter, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1382(e)(4) of this title, nonetheless be considered (except for purposes of section 1383(a)(5) of this title) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity.

(2) For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 18, such individual's income and resources shall be deemed to include any income and resources of a parent of such indivdiual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

(3) For purposes of determining eligibility for and the amount of benefits for any individual who is an alien, such individual's income and resources shall be deemed to include the income and resources of his sponsor and such sponsor's spouse (if such alien has a sponsor) as provided in section 1382j of this title. Any such income deemed to be income of such individual shall be treated as unearned income of such individual. As amended June 9, 1980, Pub.L. 96-265, Title II, § 203(a), Title III, §§ 302(a)(2), 303(c)(1), Title V, § 504(a), 94 Stat. 449, 450, 453, 471.

§ 1382d. Rehabilitation services for blind and disabled individuals; services covered; reimbursement.

(a) In the case of any blind or disabled individual who

(1) has not attained age 65, and

(2) is receiving benefits (or with respect to whom benefits are paid) under this subchapter,

the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act, or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under subchapter V of this chapter, and (except for individuals who have not attained age 16 and except in such other cases as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.

(b)(1) The Secretary shall by regulation prescribe criteria for approval of State plans for

(A) assuring appropriate counseling for disabled children referred pursuant to subsection (a) of this section and their families,

(B) establishment of individual service plans for such disabled children, and prompt referreal to appropriate medical, educational, and social services,

(C) monitoring to assure adherence to such service plans, and

(D) provision for such disabled children who are 6 years of age and under, or who have never attended public school and require preparation to take advantage of public educational services, of medical, social, developmental, and rehabilitative services, in cases where such services reasonably promise to enhance the child's ability to benefit from subsequent education or training, or otherwise to enhance his opportunities for self-sufficiency or self-support as an adult.

(2) Such criteria shall include

(A) administration

(i) by the agency administering the State plan for crippled children's services under subchapter V of this chapter, or

(ii) by another agency which administers programs providing services to disabled children and which the Governor of the State concerned has determined is capable of administering the State plan described in the first sentence of this subsection in a more efficient and effective manner than the agency described in clause (i) (with the reasons for such determination being set forth in the State plan described in the first sentence of this subsection);

(B) coordination with other agencies serving disabled children; and

(C) establishment of an identifiable unit within such agency which shall be responsible for carrying out the plan.

(c) Every individual age 16 or over with respect to whom the Secretary is required to make provision for referral under subsection (a) of this section shall accept such services as are made available to him under the Vocational Rehabilitation Act; and no such individual shall be an eligible individual or eligible spouse for purposes of this subchapter if he refuses without good cause to accept services for which he is referred under subsection (a) of this section.

(d) The Secretary is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) of this section if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months. The determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

(e)(1) The Secretary shall, subject to the limitations imposed by paragraphs (2) and (3), and subject to section 2194(b)(3) of the Maternal Child Health Services Block Grant Act, pay to the

State agency administering a State plan of a State under subsection (b) of this section, the costs incurred each fiscal year which begins after September 30, 1976, and ends prior to October 1, 1982, in carrying out the State plan approved pursuant to such subsection (b).

(2)(A) Of the funds paid by the Secretary with respect to costs, incurred in any State, to which paragraph (1) applies, not more than 10 per centum thereof shall be paid with respect to costs incurred with respect to activities described in subsection (b)(1)(A), (B), and (C) of this section.

(B) Whenever there are provided pursuant to this section to any child services of a type which is appropriate for children who are not blind or disabled, there shall be disregarded for purposes of computing any payment with respect thereto under this subsection, so much of the costs of such services as would have been incurred if the child involved had not been blind or disabled.

(C) The total amount payable under this subsection for any fiscal year, with respect to services provided in any State, shall be reduced by the amount by which the sum of the public funds expended (as determined by the Secretary) for non-Federal sources for services of the type involved for such fiscal year is less than the sum of such funds expended from such sources for services of such type for the fiscal year ending June 30, 1976.

(3) No payment under this subsection with respect to costs incurred in providing services in any State for any fiscal year shall exceed an amount which bears the same ratio to $24,070,000 as the under age 7 population of such State (and for purposes of this section the District of Columbia shall be regarded as a State) bears to the under age 7 population of the fifty States and the District of Columbia. The Secretary shall promulgate the limitation applicable to each State for each fiscal year under this paragraph on the basis of the most recent satisfactory data available from the Department of Commerce not later than 90 nor earlier than 270 days before the beginning of such year.

As amended Oct. 20, 1976, Pub.L. 94-566, Title V, § 501(a), 90 Stat. 2683; June 17, 1980, Pub.L. 96-272, Title III, § 304, 94 Stat. 529; Aug. 13, 1981, Pub.L. 97-35, Title XXI, § 2193(a)(4), (c)(8)(A), Title XXIII, § 2344, 95 Stat. 827, 828, 867.

Repeal of Subsections (b) and (e) No Later Than October 1, 1982

Pub.L. 97-35, Title XXI, §§ 2193(c)(8)(B), 2194, Aug. 13, 1981, 95 Stat.828, provided for the repeal of subsecs.(b) and (e) of this section on Oct. 1, 1982, with provision for an earlier date of repeal under special circumstances. See section 2194 of Pub.L. 97-35, set out as a note under section 701 of this title.

§ 1382e. Supplementary assistance by State or subdivision to needy individuals.

Residence requirement by State or subdivision for supplementary payments; disregarding of amounts of certain income by State or subdivision in determining eligibility for supplementary payments.

(3) Any state (or political subdivision) making supplementary payments described in subsection (a) of this section shall have the option of making such payments to individuals who receive benefits under this subchapter under the provisions of section 1382h of this title, or who would be eligible to receive such benefits but for their income.

State standards; establishment; annual public review; annual certification; payments to individuals.

(e)(1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. Such standards shall be appropriate to the needs of such recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation and protection of civil rights.

(2) Each State shall annually make available for public review a summary of the standards established pursuant to paragraph (1), and shall make

available to any interested individual a copy of such standards, along with the procedures available in the State to insure the enforcement of such standards and a list of any waivers of such standards and any violations of such standards which have come to the attention of the authority responsible for their enforcement.

(3) Each State shall certify annually to the Secretary that it is in compliance with the requirements of this subsection.

(4) Payments made under this subchapter with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a) of this section) or other payment made by a State (or political subdivision thereof) which is made for or on account of any medical or any other type of remedial care provided by an institution of the type described in paragraph (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards described in such paragraph by the appropriate State or local authorities.

As amended Oct. 20, 1976, Pub.L. 94-566, Title V, § 505(c), (d), 90 Stat. 2687; June 9, 1980, Pub.L. 96-265, Title II, § 201(b)(1), 94 Stat. 446; Aug. 13, 1981, Pub.L. 97-35, Title XXIII, § 2353(n), 95 Stat. 873.

§ 1382g. Payments to State for operation of supplementation program; eligibility, agreement with Secretary; levels of supplementary payments.

(a) In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), on or after June 30, 1977, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to expenditures for any calendar which begins

(1) after June 30, 1977, or, if later

(2) after the calendar quarter in which it first makes such supplementary payments,

such State must have in effect an agreement with the Secretary whereby the State will

(3) continue to make such aupplementary payments, and

(4) maintain such supplementary payments at levels which are not lower than the levels of such payments in effect in December 1976, or, if no such payments were made in that month, the levels for the first subsequent month in which such payments were made.

(b) The Secretary shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for a particular month or months if the State's expenditures for such payments in the twelve-month period (within which such month or months fall) beginning on the effective date of any increase in the level of supplemental security income benefits pursuant to section 1382f of this title are not less than its expenditures for such payments in the preceding twelve-month period.

Aug. 14, 1935, c. 531, Title XVI, § 1618, as added Oct. 21, 1976, Pub.L. 94-585, § 2(a), 90 Stat. 2901.

§1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment--Eligible individuals.

(a) Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382(b) of this section or under this section for the month preceding the month for which eligiblity for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1382(e)(4) of this title or ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered a disabled individual receiving supplemental security income benefits under this subchapter, for so long as the Secretary determines that--

(1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligiblity for benefits under this subchapter; and

(2) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments).

Blind or disabled individuals receiving supplementary security income benefits.

(b) For purposes of subchapter XIX of this chapter, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, received

(i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability.

(ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93-66 on such basis.

(iii) a payment of monthly benefits under subsection (a) of this section, or

(iv) a supplementary payment under section 1382e(c)(3) of this title,

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that

(1) such individual continues to be blind or continues to have the disabling

physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under this subchapter;

(2) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments);

(3) the termination of eligibility for benefits under subchapter XIX of this chapter would seriously inhibit his ability to continue his employment; and

(4) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under this subchapter and subchapter XIX of this chapter which would be available to him in the absence of such earnings.

Aug. 14, 1935, c. 531, Title XVI, § 1619, as added June 9, 1980, Pub.L. 96-265, Title II, § 201(a), 94 Stat. 445, and amended Aug. 13, 1981, Pub.L. 97-35, Title XXIII, § 2353(o), 95 Stat. 873.

§ 1382i. Medical and social services for certain handicapped persons--Authorization of appropriations for pilot program.

(a) There are authorized to be appropriated such sums as may be necessary to establish and carry out a 3-year Federal-State pilot program to provide medical and social services for certain handicapped individuals in accordance with this section.

State Allotments

(b)(1) The total sum of $18,000,000 shall be allotted to the States for such program by the Secretary, during the period beginning September 1, 1981, and ending September 30, 1984, as follows:

(A) The total sum of $6,000,000 shall be allotted to the States for the fiscal year ending September 30, 1982 (which for purposes of this section shall include the month of September 1981).

(B) The total sum of $6,000,000, plus any amount remaining available (after application of paragraph (4)) from the allotment made under subparagraph (A), shall be allotted to the States for the fiscal year ending September 30, 1983.

(C) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotments made under subparagraphs (A) and (B), shall be allotted to the States for the fiscal year ending September 30, 1984.

(2) The allotment to each State from the total sum allotted under paragraph (1) for any fiscal year shall bear the same ratio to such total sum as the number of individuals in such State who are over age 17 and under age 65 and are receiving supplemental security income benefits as disabled individuals in such year (as determined by the Secretary on the basis of the most recent data available) bears to the total number of such individuals in all the States. For purposes of the preceding sentence, the term "supplemental security income benefits" includes payments made pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93-66.

(3) At the beginning of each fiscal year in which the pilot program under this section is in effect, such State that does not intend to use the allotment to which it is entitled for such year (or any allotment which was made to it for a prior fiscal year), or that does not intend to use the full amount of any such allotment, shall certify to the Secretary the amount of such allotment which it does not intend to use, and the State's allotment for the fiscal year (or years) involved shall thereupon be reduced by the amount so certified.

(4) The portion of the total amount available for allotment to States for that particular fiscal year under paragraph (1) which is not allotted to States for that year by reason of paragraph (3) (plus the amount of any reductions made at the beginning of such year in the allotments of States for prior fiscal years under paragraph (3)) shall be reallocated in such

manner as the Secretary may determine to be appropriate to the States which need, and will use, additional assistance in providing services to severely handicapped individuals in that particular year under their approved plans. Any amount reallocated to a State under this paragraph for use in a particular fiscal year shall be treated for purposes of this section as increasing such State's allotment for that year by an equivalent amount.

Requisite features of State plans.

(c) In order to participate in the pilot program and be eligible to receive payments for any period under subsection (d) of this section, a State (during such period) must have a plan, approved by the Secretary as meeting the requirements of this section, which provides medical and social services for severely handicapped individuals whose earnings are above the level which ordinarily demonstrates an ability to engage in substantial gainful activity and who are not receiving benefits under section 1382 or 1382h of this title or assistance under a State plan approved under section 1396a of this title and which

(1) declares the intent of the State to participate in the pilot program;

(2) designates an appropriate State agency to administer or supervise the administration of the program in the State;

(3) describes the criteria to be applied by the State in determining the

eligibility of any individual for assistance under the plan and in any event requires a determination by the State agency to the effect that (A) such individual's ability to continue his employment would be significantly inhibited without such assistance and (B) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available to him under this subchapter and subchapters XIX and XX of this chapter in the absence of those earnings.

(4) describes the process by which the eligibility of individuals for such assistance is to be determined (and such process may not involve the performance of functions by any State agency or entity which is engaged in making determinations of disability for purposes of disability insurance or supplemental security income benefits except when the use of a different agency or entity to perform those functions would not be feasible);

(5) describes the medical and social services to be provided under the plan;

(6) describes the manner in which the medical and social services involved are to be provided and, if they are not to be provided through the State's medical assistance and social services programs under subchapters XIX and XX of this chapter (with the Federal payments being made under subsection (d) of this section rather than under those subchapters), specifies the particular mechanisms and procedures to be used in providing such services; and

(7) contains such other provisions as the Secretary may find to be necessary or appropriate to meet the requirements of this section or otherwise carry out its purpose.

The plan under this section may be developed and submitted as a separate State plan, or may be submitted in the form of an amendment to the State's plan under section 1397b(d)(1) of this title.

Payments to States; computation of payments.

(d)(1) From its allotment under subsection (b) of this section for any fiscal year (and any amounts remaining available from allotments made to it for prior fiscal years), the Secretary shall from time to time pay to each State which has a plan approved under subsection (c) of this section an amount equal to 75 per centum of the total sum expended under such plan (including the cost of administration of such plan) in providing medical and social services to severely handicapped individuals who are eligible for such services under the plan.

(2) The method of computing and making payments under this section shall be as follows:

(A) The Secretary shall, prior to each period for which a payment is to be made to a State, estimate the amount to be paid to the State for such period under the provisions of this section.

(B) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this subsection) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such period under this section.

Rules and Regulations

(e) Within nine months after June 9, 1980, the Secretary shall prescribe and publish such regulations as may be necessary or appropriate to carry out the pilot program and otherwise implement this section.

Reports

(f) Each State participating in the pilot program under this section shall from time to time report to the Secretary on the operation and results of such program in that State, with particular emphasis upon the work incentive effects of the program. On or before October 1, 1983, the Secretary shall submit to the Congress a report on the program, incorporating the information contained in the State reports along with his findings and recommendations.

Aug. 14, 1935, c. 531, Title XVI, § 1620, as added June 9, 1980, Pub.L. 96-265, Title II, § 201(c), 94 Stat. 446, and amended Aug. 13, 1981, Pub.L. 97-35, Title XXIII, § 2353(p), 95 Stat. 874.

§ 1382j. Attribution of sponsor's income and resources to aliens--Attribution as unearned income.

(a) For purposes of determining eligibility for and the amount of benefits under this subchapter for an individual who is an alien, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual (in accordance with subsections (b) and (c) of this section) for a period of three years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

Determination of amount and resources.

(b)(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any year shall be determined as follows:

(A) The total yearly rate of earned and unearned income (as determined under section 1382a(a) of this title) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such year.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the maximum amount of the Federal benefit under this for such year which would be payable to an eligible individual who has no other income and who does not have an eligible spouse (as determined under section 1382 (b)(1) of this title), plus (ii) one-half of the amount determined under clause (i) multiplied by the number of individuals who are dependents of such sponsor (or such sponsor's spouse if such spouse is living with the sponsor), other than such alien and such alien's spouse.

(C) The amount of income which shall be deemed to be unearned income of such alien shall be at a yearly rate equal to the amount determined under subparagraph (B). The period for determination of such amount shall be the same as the period for determination of benefits under section 1382(c) of this title.

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any year shall be determined as follows:

(A) The total amount of the resources (as determined under section 1382b of this title) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) $1,500 in the case of a sponsor who has no spouse with whom he is living, or (ii) $2,250 in the case of a sponsor who has a spouse with whom he is living.

(C) The resources of such sponsor (and spouse) as determined under subparagraphs (A) and (B) shall be deemed to be resources of such alien in addition to any resources of such alien.

Support and Maintenance

(c) In determining the amount of income of an alien during the period of three years after such alien's entry into the United States, the reduction in dollar amounts otherwise required under section 1382a(a)(2)(A)(i) of this title shall not be applicable if such alien is living in the household of a person who is a sponsor (or such sponsor's spouse) of such alien, and is receiving support and maintenance in kind from such sponsor (or spouse), nor shall support or maintenance furnished in cash or kind to an alien by such alien's sponsor (to the extent that it reflects income or resources which were taken into account in determining the amount of income and resources to be deemed to the alien under subsection (a) or (b) of this section) be considered to be income of such alien under section 1382a(a)(2)(A) of this title.

Information and documentation; agreements with Secretary of State and Attorney General.

(d)(1) Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this subchapter, be required to provide to the Secretary such information and documentation with respect to his sponsor as may be necessary in order for the Secretary to make any determination required under this section, and to obtain any cooperation form such sponsor necessary for any such determination. Such alien shall also be required to provide to the Secretary such information and documentation as the Secretary may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Secretary shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Secretary, and wehreby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

Joint and several liability of alien and sponsor for overpayments.

(e) Any sponsor of an alien, and such alien, shall be jointly and severably liable for an amount equal to any overpayment made to such alien during the period of three years after such alien's entry into the Unites States, on account of such sponsor's failure to provide correct information udner the provisions of this section, except where such sponsor was without fault or where good cause for such failure existed. Any such overpayment which is not repaid to the Secretary or recovered in accordance with section 1383(b) of this title shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this chapter.

Exemptions

(f)(1) The provisions of this section shall not apply with respect to any individual who is an "aged, blind, or disabled individual" for purposes of this title by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), from and after the onset of the impairment, if such blindness or disability commenced after the date of such individual's admission into the United States for permanent residence.

(2) The provisions of this section shall not apply with respect to any alien who is

(A) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 1153(a)(7) of Title 8;

(B) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 1157(c)(1) of Title 8;

(C) paroled into the United States as a refugee under section 1182 (d)(5) of Title 8; or

(D) granted political asylum by the Attorney General.

Aug. 14, 1935, c. 531, Title XVI, §§ 1621, as added June 9, 1980, Pub.L. 96-265, Title V, § 504(b), 94 Stat. 471.

§ 1383. Procedure for payment of benefits -- Time, manner, form and duration of payments; promulgation of regulations.

(a)(1) Benefits under this subchapter shall be paid at such time or times and in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

[See main volume for text of (2) and (3)]

(4) The Secretary --

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding $100; and

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 3 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) of this section solely because such individual is determined not to be disabled or blind.

[See main volume for text of (a)(5)]

(6) Notwithstanding any other provision of this subchapter, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1382c(a)(3) of this title) shall not be terminated or suspended because the physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if --

(A) such individual is participating in an approved vocational rehabilitation program under a State plan approved under Title I of the Rehabilitation Act of 1973, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

Overpayments and underpayments; adjustment, recovery, or payment of amounts by Secretary

(b)(1) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter.

(2) In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of Title 26 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 43 of Title 26 for such year, so that such individual is liable under section 43(g) of Title 26 for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this subchapter so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.

(3) For payments for which adjustments are made by reason of a retroactive payment of benefits under subchapter II of this chapter, see section 1320a-6 of this title.

Hearing to determine eligibility or amount of benefits; time within which to request hearing; time for determinations of Secretary pursuant to hearing; judicial review

(c)(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this subchapter. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understanable language, setting forth a discussion of the evidence and stating the Secretary's determination and the reason or reasons upon which it is based. The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaing of section 1382c(a)(3) of this title), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Secretary's final determinations under section 405 of this title.

Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

(d)(1) The provisions of section 407 of this title and subsections (a), (d), (e), and (f) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

(2) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this subchapter, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such

person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this subchapter, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this subchapter by word, circular, letter, or advertisement, or who shall knowlingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

[See main volume for text of (e) and (f)]

Reimbursement to States for Interim assistance payments; definitions; agreement; hearing provisions inapplicable to disagreements concerning payments

(g)(1) Notwithstanding subsection (d)(1) of this section and subsection (b) of this section as it relates to the payment of less than the correct amount of benefits, the Secretary may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a

State (or a political subdivision thereof if agreed to by the Secretary and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

[See main volume for tex of
(2) to (5)]

(6) Repealed. Pub.L. 94-365, §1 July 14, 1976, 90 Stat. 990.

Payment of certain travel expenses

(h) The Secretary shall pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Secretary in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 1382c(e) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations.

Unnegotiated checks; notice to Secretary; payment to States; notice to States; investigation of payees

(i)(1) The Secretary of the Treasury shall, on a monthly basis, notify the Secretary of all benefit checks issued under this subchapter which include amounts representing State supplementary payments as described in paragraph (2) and which have not been presented for payment within one hundred and eighty days after the day on which they were issued.

(2) The Secretary shall from time to time determine the amount representing the total of the State supplementary payments made pursuant to agreements under section 1382e(a) of this title and under section 212(b) of Public Law 93-66 which is included in all checks payable to individuals entitled to benefits under this subchapter but not presented for payment within one hundred and eighty days after the day on which they were issued, and shall pay each State (or credit each State with) an amount equal to that State's share of all such amount. Amounts not paid to the States shall be returned to the appropriation from which they were originally paid.

(3) The Secretary, upon notice from the Secretary of the Treasury under paragraph (1), shall notify any State having an agreement described in paragraph (2) of all such benefit checks issued under that State's agreement which were not presented for payment within one hundred and eighty days after the day on which they were issued.

(4) The Secretary shall, to the maximum extent feasible, investigate the whereabouts and eligibility of the individuals

whose benefit checks were not presented for payment within one hundred and eighty days after the day on which they were issued.

As amended Jan. 2, 1976, Pub.L. 94-202, §§ 1, 2, 89 Stat. 1135; July 14, 1976, Pub.L. 94-365, § 1, 90 Stat. 990; Oct. 20, 1976, Pub.L. 94-569, § 4(a), 90 Stat. 2700; Apr. 1, 1980, Pub.L. 96-222, Title I, § 101(a)(2)(C), 94 Stat. 195; June 9, 1980, Pub.L. 96-265, Title III, §§ 301(b), 305(b), 310(b), Title V, § 501(c), 94 Stat. 450, 457, 459, 470; Oct. 19, 1980, Pub.L. 96-473, § 6(h), 94 Stat. 2266; Aug. 13, 1981, Pub.L. 97-35, Title XXIII, § 2343(a), 95 Stat. 866.

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§ 13144(b) 103

Claims Manual § 12964 (April 1974) provides in pertinent part:

> "(b) Computations
>
> To compute monthly payment amounts which include both the SSI payment and the optional supplementary payment, for the members of couples specified in (a) above, follow the steps explained below:
>
> (1) SSI STANDARD PAYMENT AMOUNT OF $25.00 PER MONTH IS NOT INVOLVED.
>
> ***
>
> "(B) Determine the amount of countable income for the month to be allocated to each member of the coiple. If the couple's countable income is determined on a quarterly basis, take 1/3 of the quarterly countable income to find the couple's monthly countable income. Next, allocate the couple's monthly countable income to each member by applying the same ratio used in distributing the SSI standard payment amount [benefit level] between the members of the couple. For example, if both members share equally in the SSI standard payment, allocate 1/2 of the countable income to each. If one member's share of the SSI standard payment amounts to 1/3, allocate 1/3 of the countable income to him. If one member's share of the SSI standard payment amount is 2/3, allocate 2/3 of the countable income to him. (See § 13144.2 which explains when one member's share is 1/3 or 2/3, rather than 1/2 of the SSI standard payment amount.)"

Claims Manual § 13144 provides in pertinent part:

> "(a) Computation Where Members of an Eligible Couple Are Living Together.
>
> When an eligible individual and an eligible spouse are living together they are treated as a single unit for the purpose of computing payment amount. Consider all the income received by the unit in a calendar quarter to find the countable income that is subtracted from the SPA (Standard Payment Amount, i.e., the benefit level] due that unit in the same calendar quarter. It is immaterial that the income is received by only one member of the unit or that it is utilized by only one member of the unit. Similarly, determine the quarterly SPA for the eligible individual and eligible spouse as a couple. (Emphasis in original.)
>
> ***
>
> "(b) Computation Where Members of Eligible Couple Are Living Apart - General.
>
> When husband and wife are determined to be living apart (§A2450 ff.), but remain an eligible couple because they have not been living apart for more than 6 months, their payments are ordinarily computed as if they were living together as in (a) above."

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20 C.F.R. 416.1001(a)

In determining whether an aged, blind or disabled individual may receive payments under Title XVI of the Social Security Act, the income and resources tests which an individual must ... may depend in part on whether such individual has a spouse, whether such individual and such spouse are living in the same household (or have been separated for less than six months) and whether such spouse is also an aged, blind, or disabled individual. If a husband and wife are both aged, blind, or disabled individuals living in the same household, or if such husband and wife have been separated for less than six months, and such husband and wife are eligible for payments under Title XVI of the Act, such payments shall be made to them as a couple. The payment made to an eligible couple will be less than the sum of the separate amounts which they could receive if each was an eligible individual.

Regulation 416.1001 begins as follows:

> "(a) Marital relationship. In determining whether an aged, blind, or disabled individual may receive payments under Title XVI of the Social Security Act, the income and resources tests which such individual must meet (see subpart K [income] and L [resources] of this Part 416) may depend in part on whether such individual has a spouse, whether such individual and such spouse are living in the same household (or have been separated for less than 6 months) and whether such spouse is also an aged, blind, or disabled individual." (Emphasis in original.)
>
> . . .
>
> "If a husband and wife are both aged, blind, or disabled individuals living in the same household, or if such husband and wife have been separated for less than 6 months, and such husband and wife are eligible for payments under title XVI of the Act, such payments shall be made to them as a couple. The payment made for an eligible couple will be less than the sum of the separate amounts which they could receive if each was an eligible individual."
>
> . . .
>
> "The eligibility of an individual or a couple for a payment for a month will be based on their marital status on the first day of the month. Any subsequent change in marital status within a month will not affect eligibility for, or the amount of, the payment for such month."

Regulation 416.1001(a) ends with reference to a second effect on the selection of income rules caused by marriage which has no bearing on the issues of this case:

> "The special income and resources test (see Subparts K and L of this part 416) which may be applicable to a blind or disabled individual who is under age 18, and who is a student age 18 but under age 22 regularly attending school, apply only if such blind or disabled individual is not married."

§ 416.1040 Effect of termination of marriage.

(a) General. Where an eligible individual and eligible spouse are reciving payments under title XVI of the Act, the eligible spouse will no longer qualify as a spouse effective with the month following the month in which the marriage is terminated, or deemed terminated, as explained in paragraph (b) or (c) of this section. Beginning with the month following such month of termination, the eligible spouse, if otherwise qualified, may receive payments as an eligible individual.

(b) Termination of marriage by death, divorce, or annulment. Where either spouse to a marriage dies, the surviving spouse shall be deemed to be unmarried beginning with the month following the month of death. Where a court of competent jurisdiction issues a decree of divorce or annulment, both parties shall be deemed not married to each other beginning with the month following the month in which the decree becomes final.

(c) Separation of parties -- (1) Where neither party begins living with another individual. Where an eligible individual and eligible spouse receiving payments under title XVI of the Act cease living together in the same household and neither party begins living with another individual and representing himself and such other individual to the community in which they reside as husband and wife, such eligible individual and eligible spouse shall not be considered husband and wife for purposes of this Part effective with the month in which they have been separated for 6 months. The 6-month period of separation shall be counted from the date of separation. If there is no comparable date in the sixth month following the month of separation, the 6-month period will be deemed to have ended on the last day of the sixth month following the month in which the parties separated.

(2) Where one of the parties begins living with another individual. Where an eligible individual and eligible spouse receiving payments under title XVI of the Act cease living together in the same household, and either party commences sharing a common household with another person and represents to the community in which they reside that he or she and such other person are husband and wife, the eligible individual and eligible spouse shall not be considered husband and wife effective with the month in which the eligible individual or the eligible spouse commenced living in the common household with such other person.

§ 416.1041 Evidence of termination of marriage.

(a) Termination of marriage by divorce, annulment, or death. Where evidence of termination of a marriage is pertinent to a determination under title XVI of the Act, the applicant, when so requested by the Administration, shall submit:

(1) A certified copy of the decree of divorce dissolving the marriage; or

(2) A certified copy of the decree of annulment; or

(3) Evidence of the death of the other party to the marriage; or

(4) If none of the evidence described in paragraphs (a)(1), (2), and (3) of this section is available, the applicant shall state the reason therefor, and furnish other evidence of probative value.

(b) Separation of the parties. An applicant for, or a recipient of, payments under title XVI of the Act who is no longer living together in the same household with his spouse who is age 65, or blind, or disabled, shall notify the Administration. As part of this notice he shall indicate to the best of his or her knowledge the date of the separation, the place where the spouse is living, how long the separation is expected to last, and whether the applicant or spouse is living with any other individual as husband or wife.

Regulation 416.1102(a)(1975) defines "income" as:

> "the receipt by an individual of any property or service which he can apply, either directly or by sale or conversion, to meeting his basic needs for food, clothing, and shelter."

Regulation 416.1120 provides that:

> **"[i]n determining the amount of unearned income the amount actually available to the individual is considered." (Underlining added.)**

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However the legislative history and statutes - in particular 42 U.S.C. §§ 1382(b)(2) and 1382c(b) - are unclear as to Congress's full intent with respect to the benefit level. Was the six-month rule meant to prevent all increased SSI costs during the first six months of an eligible couple's separation? Are some increased costs acceptable so long as SSI is not paid to anyone with income equal to or in excess of the individual's benefit level? These questions are not before the Court in this appeal. They are merely raised by Mrs. Johnson to show that the principle of actual availability has no bearing on them and that permitting consideration of actually available income only does not necessarily mean that the Johnsons would, together, receive even a cent more after separation than they received before separation.

Even if some cost increases are permissible, the six-month rule, nevertheless, precludes paying more than the couple's benefit, or $557.00, to the Johnsons. The couple's benefit could be divided in one-half ($287.50) and paid to each member of the couple, less actually available income. In this case, Mrs. Johnson would have received $287.50 and Mr. Johnson, nothing. No SSI would be paid to Mr. Johnson because he had income equal to or in excess of the individual's benefit level.

Mrs. Johnson did not receive the individual's benefit. She would merely receive her pro-rated share of the couple's benefit. That is some disincentive to a sham separation, although not a complete one.

An alternative construction of the six-month rule is a compelte disincentive. The SSI benefits, which the couple shared before separation, could be paid entirely to one member of the couple or divided - whatever is necessary to equalize their financial positiions given the income actually available to each. In this case, Mrs. Johnson would have received twice as much SSI as she actually was paid, $126.30 rather than $63.15. Her situation would not have been nearly so desperate, Mr. Johnson would not have abused the SSI program, only actually available income would have been considered in distributing the benefits, and not a cent more SSI would have been paid after separation than was paid before separation.

There may be other approaches more appropriate to the relative positions of the spouses which the Secretary may develop. She has the power to do so. 42 U.S.C. §§ 1302, 1383(a); Arizona St. Dept. of Pub. W. v. Dept. of H.E.W., 449 F.2d 456 (9th Cir. 1971), cert. denied, 405 U.S. 919 (1971). Mrs. Johnson offers the above suggestions to show that counting only actually available income does not undermine the Congress's intent in legislating the six-month rule, but it does advance the welfare goal of aiding only the needy to the maximum extent permissible under the applicable statutes by counting only actually available income.

25.

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II

THE LEGISLATIVE HISTORY OF THE SIX MONTH RULE AND RELEVANT CASE LAW PERMIT REDUCTION OF EACH SPOUSE'S SHARE OF THE COUPLE'S GRANT TO ACCOUNT FOR ACTUALLY AVAILABLE INCOME.

A. The Legislative History of the Six Month Rule Discloses an Intent Only to Limit the Maximum Payment, Not Abandon the Concept of Actually Available Income.

That language expresses the intent to prevent sham separations. Of crucial significance is the reference only to the couple's benefit and not the computation of income for the spouses while living apart.

5.

Mrs. Johnson's position is wholly consistent with the holding in Mansfield that the maximum grant payable to a separated couple not exceed the couple's grant level until the separation has lasted for six months. Mrs. Johnson is in full agreement with the Mansfield court that the total benefits paid to the Johnsons during the first six months of their separation not exceed the couple's benefit. Mrs. Johnson's request is even more modest. She asks only for her prorated share of the couple's benefit less income actually available to her.

Of course, Mr. Johnson's share of the couple's benefit should also be reduced by the amount of income actually available to him.

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No. 81-2106

In the Supreme Court of the United States

OCTOBER TERM, 1981

MARIE JOHNSON, PETITIONER

v.

SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioner challenges provisions of the Social Security Administration Claims Manual that prescribe the method for determining financial eligibility under the Supplemental Security Income for the Aged, Blind, and Disabled (SSI) program, 42 U.S.C. 1381 *et seq.*

1. The SSI program establishes a "Federal guaranteed minimum income level" for aged, blind, and disabled people. *Schweiker* v. *Wilson,* 450 U.S. 221, 223 (1981). If an applicant and his spouse are both eligible for SSI benefits, they are treated as a unit so long as they live together. See 42 U.S.C. 1382(a)(2), (b)(2), 1382c(b). The amount of SSI benefits payable to two unmarried people is greater than the amount that would be paid to those same people if they were married to each other and living together. See 42 U.S.C. 1382(b); H.R. Rep. No. 92-231, 92d Cong., 1st Sess. 150 (1971). To eliminate any potential incentive for married

couples to pretend to separate so that they would receive greater total payments, Congress provided that if both members of a couple are eligible for SSI benefits, they are to be treated as a couple for six months after they separate. See 42 U.S.C. 1382c(b); H.R. Rep. No. 92-231, *supra*, at 150.

2. Petitioner and her husband were both eligible for SSI benefits in September 1978, when they separated. Although petitioner had no income, her husband had monthly income of $448.10; they jointly received SSI benefits of $126.30 per month. After petitioner and her husband separated, each of them received half of the same SSI benefit payment ($63.15) for the next six months (Pet. App. 4-5). Unless her circumstances changed again, petitioner became eligible for SSI benefits as an individual in April 1979.

Petitioner filed this lawsuit in the United States District Court for the Northern District of California, alleging that she had not actually received any of her husband's income after they separated in September 1978. Petitioner argued that the provisions of the Social Security Administration's Claims Manual (an internal handbook) that required calculation of her SSI benefit during the six-month period as if she and her husband were still living together were inconsistent with both the SSI statute and the agency's regulations. According to petitioner, during the six months after her separation only income that she actually received from her husband could be considered in determining the amount of her SSI benefit. The district court rejected the claim (Pet. App. 4-11), holding that "the actions of the Secretary * * * have not contravened the relevant statutory and regulatory provisions" (*id.* at 11), and the court of appeals affirmed in an unpublished memorandum (*id.* at 1-2).

3. Petitioner has abandoned the argument, presented below, that the agency must determine her SSI benefit for the six months following her separation without regard to the total benefit she and her husband previously were receiving. She now concedes (Pet. 17 & n.11, 35) that the SSI statute and regulations limit the total amount of the SSI benefit payable to an SSI beneficiary and his eligible spouse during the first six months after they separate. Petitioner apparently contends, however, that the agency may consider the income of an SSI beneficiary's eligible spouse in calculating her SSI benefit during that period only if the money was in fact transferred. In petitioner's view, a limitation on the total amount payable to the SSI beneficiary and his eligible spouse after their separation is sufficient to satisfy Congress' intention to eliminate any incentive for sham separations.

The language of the statute refutes petitioner's claim. In determining the eligibility of an SSI applicant who has an eligible spouse, his "income (together with the income of such spouse)" must be considered while they live together *and* for six months after they separate. 42 U.S.C. 1382(a)(2)(A), (b)(2), 1382c(b). Congress has thus mandated that for six months after an eligible couple separates, the husband and wife are to be treated as a couple living together. Before their separation, petitioner and her husband had an equal interest in the monthly SSI payment. Hence, issuance of separate checks to petitioner and her husband for 50% of the amount to which they are *jointly* entitled in each of the six months following their separation is fully consistent with the statute. Contrary to petitioner's contentions, nothing in the language of the statute or its history requires the Secretary to attempt any apportionment of the total benefit paid to the applicant and his spouse based on their individual non-SSI income during the first six months after their separation.[1] Nor do the regulations cited by petitioner (Pet. 18-19) suggest that the Secretary has adopted such a practice.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JULY 1982

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[1] Petitioner relies (Pet. 24-31) on *King* v. *Smith*, 392 U.S. 309 (1968); *Lewis* v. *Martin*, 397 U.S. 552 (1970); *Shea* v. *Vialpando*, 416 U.S. 251 (1974); and *Van Lare* v. *Hurley*, 421 U.S. 338 (1975). That reliance is misplaced, for, contrary to petitioner's assertion (Pet. 24), those cases (which involve the Aid to Families with Dependent Children program, not the SSI program) do not stand for the general proposition that "absent a clear congressional statement to the contrary" income means "income actually available for use." See *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 48 & n.18 (1981); *Hammond* v. *Secretary of HEW*, 646 F. 2d 455, 457 n.3 (10th Cir. 1981); *Kollett* v. *Harris*, 619 F. 2d 134, 138 n.3 (1st Cir. 1980).

[2] Whatever petitioner's rights under state law, her husband's failure to contribute any of his non-SSI income to her during the six months after their separation does not affect either his rights under the SSI statute or hers. Petitioner is no more entitled to the entire SSI benefit than is her husband. The practice of issuing separate checks for 50% of the joint SSI benefit is fully consistent with the statute, fair, and sensible; also, as the district court recognized (Pet. App. 10), the agency thereby avoids the tremendous administrative burden of trying to apportion the benefit on the basis of non-SSI income during the six months after separation.